IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITANo.22 of 2004
Date of decision 27. 8 .2007

Devender Goel .. Appellant

Versus

Assistant Commissioner of Income Tax, Investigation Circle II, Ambala
.. Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

PRESENT: Mr.Pankaj Jain, Advocate for the Appellant

M.M.Kumar, J.

The assessee has approached this Court under Section 260 A of the Income Tax Act,1961 challenging the order dated 7.1.2002 passed by the Income Tax Appellate Tribunal, Chandigarh Bench Chandigarh in ITA (SS) No. 1181/Chandi/96 in respect of block assessmentfor the years 1986-87 to 1996-97. The assessee has claimed that following substantial questions of law would arise for determination of this Court:

"1). Whether in the facts and circumstances of the case if the Tribunal is right by ignoring the law laid down under the Income Tax Act against the person whom the search and seizure operation were directed?

2) Whether on the facts and circumstances of the case the Tribunal is right in ignoring that the evidence collected during any search operation cannot be used against the person against whom the search peration was directed?

3). Whether on the facts and circumstances of the case the Tribunal is right in upholding the addition of

Rs.3,65,000/- by holding that the assessee had not produced some credential evidence that the transaction did not materialise?

4. Whether on the facts and circumstances in the case, the Tribunal is right in affording the addition of Rs. 3,42,455/- by holding that evidence is produced for the same of silver articles and sharing of profit ?; and

5. That the order of the Income Tax Tribunal is patently illegal and contrary to law and liable to be set aside"?

Brief facts may first be noticed. On 28.9.1995, the department conducted a search and seizure operation, under Section 132 of the Act, at the residential premises of the assessee and various valuable items amounting to Rs. 16,83,300/- were found, out of which valuables worth Rs. 15,67,190/- were seized. Other than this, books of accounts and other documents were also found and seized. It is apposite to mention here that till March, 1995 the assessee was carrying on the business of jewellery under the name and style of M/s Sagar Jewellers at Kurukshetra. The said business was wound up and the assessee joined as Manager in the firm of M/s New Sagar Jewellers, which was proprietary concern of his wife Smt. Sangeeta Goel. The Assessing Officer after issuing notice, dated 31.1.1996, under Section 158BC of the Act called for the return of income for the block period in question. The assessee filed his return of income on 5.7.1996 declaring undisclosed income at nil. Assessment proceedings were completed on 30.9.1996 at an undisclosed income of Rs. 39,23,124/-.

Against the order dated 30.9.1996, passed by the Assistant Commissioner of Income-tax-respondent, the assessee filed an appeal

before the Tribunal impugning various additions made by the Assessing Officer, which was partly allowed vide order dated 7.1.2002 (Annexure A/2).

We have heard the learned counsel at some length. All that has been contended by the learned counsel is that the statement made by Smt. Shashi Bala as reflected in the assessment order dated 30.9.1996 must be regarded as an admission. According to the learned counsel she has submitted that amount of Rs. 1,20,000/- was lent to the appellant to earn interest. On further query by the officer concerned as to whether she had earned any interest income on the amount lent by her for such a long time since the year 1985-86 she had replied in the negative. She also accepted that she did not keep any account of lending money to Shri Ravinder Goel and she had not made any calculations as to how much share of profit from the business of Pawn Brokering she had received. According to the learned counsel the statement of Smt. Shashi Bala must be regarded as an admission and therefore no part of the recovery effected could be imputed to the appellant. Learned counsel has then argued that there was no evidence for upholding addition of Rs.3,65,000/- as no credible evidence was brought on record.

We have closely examined the submissions made by the learned counsel and are of the view that the appellant cannot be permitted to use the self serving statement of his wife Smt. Shashi Bala as a gospel truth nor it could be regarded as an admission. There is ample evidence on record to support the finding indicating the amount of recovery effected. In order to succeed that the statement made by Shashi Bala is an admission it is required to be shown that the afore-mentioned statement was self arming

statement within the meaning of Section 17 of the Evidence Act,1872. It is trite to observe that admission is a statement which may suggest an inference as to any fact in issue or relevant fact which has been made by a person in specified circumstances. The statement made by a person who has any proprietary or pecuniary interest in the subject matter of proceedings if such a statement has been made in their character during the subsistence of proprietary or pecuniary interest.

The questions of law which have been claimed by the petitioner when closely examined do not fall within the four corners of Section 260A (1) of the Act. The first question is vague as no specific provision of law concerning search and seizure has been pointed out which might have been ignored or violated by the Tribunal. Likewise, the second question also suffers from the same malady. As far as question no.3 is concerned the addition has to be made after recovery of documents and cash in the absence of any credible evidence having been produced by the assessee. Likewise, question no.4 would also suffer from the same melody. These are infact all questions of fact which would not constitute substantial questions of law as per the provisions of Section 260A (1) of the Act. Therefore, the appeal is wholly without merit and is thus liable to be dismissed.

For the reasons afore-mentioned, this appeal fails and the same is dismissed.

(M.M.Kumar)
Judge

(Ajay Kumar Mittal)
Judge

27.8.2007
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